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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/817,842

03/26/2001

Robert F. Gazdzinski

RFG.006CP1

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04/14/2009

GAZDZINSKI & ASSOCIATES

11440 WEST BERNARDO COURT, SUITE 375

SAN DIEGO, CA 92127

EXAMINER

LEUBECKER, JOHN P

ART UNIT

PAPER NUMBER

3739

MAIL DATE

DELIVERY MODE

04/14/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: ROBERT F. GAZDZINSKI

Application No. 09/817,842
Technology Center 3700

Mailed: April 14, 2009

Before KRISTA ZELE *Deputy Chief Appeals Administrator*
ZELE, *Deputy Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on March 17, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matters requiring attention.

EXAMINER'S ANSWER: MISSING CERTIFIED TRANSLATION

The Examiner relied on the foreign reference, Seiko Epson Corp. (JP 2-82889), in rejecting claims 49 and 55. A full certified English translation of the above-noted foreign reference is not reflected in the Image File Wrapper (IFW).

When an Examiner relies on a document “in a language other than English, a translation *must* be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection” (emphasis added). MPEP § 1207.02. Pursuant to a memorandum dated April 29, 2002 by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy:

Effective immediately, no appeal should be forwarded to the Board of Patent Appeals and Interferences for decision where: (1) a rejection is supported in whole or part by an abstract without reference to the underlying document, . . . ; or (2) a rejection is supported in whole or part by a prior art document not in the English language, unless accompanied by a translation of the prior art document into English.

The memorandum also states “[i]f the document is in a language other than English and the examiner seeks to rely on that document, a translation *must* be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection” (emphasis added).

APPEAL BRIEF: MISSING SIGNATURE

The review of the file reveals that the Appeal Brief filed February 25, 2008, is unsigned, as required by 37 C.F.R. § 1.33. To avoid dismissal of the appeal, Appellant must ratify the appeal brief.

CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner to:

- (1) obtain a full certified English language translation of the above-noted foreign reference;
- (2) complete the IFW by having the translation obtained and scanned into the IFW file;
- (3) provide copies of the translations obtained to Appellant;
- (4) hold the Appeal Brief filed February 25, 2008 defective, as required by 37 C.F.R. § 41.37(d);
- (5) notify the Appellant to submit a “paper” which corrects the Appeal Brief’s Summary of Claimed Subject Matter under 37 C.F.R. § 41.37(c)(1)(v);
- (6) acknowledge and consider any “paper” submitted by Appellant to correct the Appeal Brief; and
- (7) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/BIM

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